

REMARKS/ARGUMENTS

Claims 1-24 are all the claims pending in the present application.

Formal Matters

1. Applicants thank the Examiner for acknowledging the claim to domestic priority under 35 U.S.C. § 119(e).
2. Claim 20 stands rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. Applicants have amended the claim as suggested by the Examiner and therefore respectfully requests that the rejection be withdrawn.

Art Rejections

1. Claims 1-3, 8, 10-14, 18, 19, 21-24 stand rejected under 35 U.S.C. § 102(b) a being anticipated by Stimpson et al., U.S. Patent No. 5,551,416 (“Stimpson”). Claims 1, 21 and 23 are all independent claims. Applicants respectfully traverse this rejection for at least the reasons stated below.

To be an “anticipation” rejection under 35 U.S.C. § 102, the reference must teach every element and recitation of the Applicants’ claims. Rejections under 35 U.S.C. § 102 are proper only when the claimed subject matter is identically disclosed or described in the prior art. Thus, the reference must clearly and unequivocally disclose every element and recitation of the claimed invention.

Stimpson is deficient as an anticipatory reference in relation to amended independent claims 1, 21, and 23 for at least the following reasons. The nebuliser disclosed by Stimpson uses a piezo-electric transducer (60) which is located in the base of a chamber (50) containing the liquid medicament. (*See, e.g., Figures 6, 7a, 8, and 8a*). The high frequency vibration of the transducer creates a fine mist of particles which are drawn into the air stream. In comparison, the claimed subject matter uses an *ejection device to physically eject liquid particles into the air stream*, which is a different process to creating a fine mist by means of a high frequency

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transducer. Thus, the type of device used to place the particles into the air stream in Stimpson are distinguishable from the claimed subject matter.

Therefore, the structure disclosed in Stimpson cannot anticipate the claimed subject matter. As such, the Examiner is respectfully requested to withdraw the §102 rejection as to amended independent claims 1, 21 and 23 and from the claims that depend therefrom.

2. Claims 4-7 and 15-17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Stimpson in view of Michaels et al., U.S. Patent No. 3,812,854 (“Michaels”). Claims 4-7 and 15-17 ultimately depend from independent claim 1. Stimpson is deficient with respect to claim 1 for at least the reasons stated above. Therefore, the Examiner must rely on Michaels to compensate for the foregoing deficiencies.

Michaels is directed to an ultrasonic nebulizer wherein a porous solid body (11) is vibrated ultrasonically to produce the aerosol. (*See, e.g., Figure 2*). Michaels, like Stimpson, uses a piezo-electric vibrator. Again, the claimed subject matter uses an *ejection device* to *physically eject liquid particles into the air stream*, which is a different process to creating a fine mist by means of a high frequency transducer.

Because Michaels fails to disclose the above identified recitations with respect to amended independent claim 1, Applicants submit that claims 4-7 and 15-17 are patentable at least by virtue of their dependency. The Examiner is therefore respectfully requested to withdraw the § 103(a) rejection as to claims 4-7 and 15-17.

3. Claims 9 and 20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Stimpson. Claims 9 and 20 both depend from independent claim 1. Stimpson is deficient with respect to claim 1 for at least the reasons stated above. Because Stimpson fails to disclose each recitation of independent claim 1, Stimpson cannot possibly render obvious claims 9 and 20 by virtue of their dependency. The Examiner is therefore respectfully requested to withdraw the § 103(a) rejection as to claims 9 and 20.

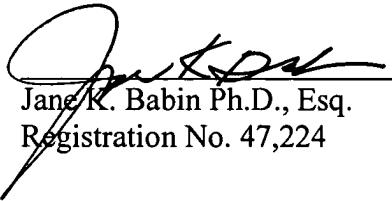
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CONCLUSION

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

Applicants hereby petition for any extension of time which may be required to maintain the pendency of this case, and any required fee, except for the Issue Fee, for such extension is to be charged to Deposit Account No. 50-2613 (Order No. 38466.00008.UTL1).

Respectfully submitted,



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